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II. Compilation of comments

1. Italy

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Question 1: Information regarding the legislative framework

Italian Decree No. 28/2010 on Mediation in Civil and Commercial disputes entered into force on the 20th of March 2010 and it has been amended with Law No. 98 of 2013. This decree sets up a mediation procedure for disputes regarding disposable civil and commercial rights, which can be resolved by conciliation (note: conciliation in this context refers to its legal meaning in Italian law, referring to the settlement agreement arising from a mediation proceeding). This particular kind of mediation has specific features provided by the law. The mediation procedure must be administered by accredited mediation institutions composed of certified (trained by accredited training centres) mediators. These mediation institutions are listed in a Registry at the Ministry of Justice.

In some cases, an attempt at mediation is mandated either by Italian law or by the order of a judge and in these cases the lawyers of all parties are obliged to be present. In other cases, the parties agree voluntarily and/or are obliged by contractual stipulations (conciliation clauses) to attempt mediation within the parameters of the decree.

Following the procedure set up by the decree, several legal guarantees — including guarantees of confidentiality, the suspension of the limitation period and the enforceability of the mediation clause — are granted. There are certain relevant advantages in following this procedure, such as fiscal benefits and especially the enforceability of settlement agreements resulting from this mediation procedure.

i. The enforceability of the agreement, as a result of a mediation proceedings as governed by Decree No. 28, including both pecuniary and non-pecuniary obligations, can be reached in two different ways (as per art. 12 of the Decree No. 28). All other settlement agreements, for example those arising from ad-hoc mediation, are treated by the law as contracts.

- First way: each party can present the settlement agreement to the Court to be ratified by the President of the Tribunal, provided its formal regularity and its compliance with imperative norms and public order have been verified;
- Second way, if the lawyers, having certified the conformity of the agreement with imperative norms and public order, agree to sign it, the settlement agreement becomes directly enforceable on the Italian territory.

Such provision does represent a significant development, making the procedure more attractive in the considerable number of cases where the parties have an interest in reaching a settlement within a short timescale and with a reasonable degree of certainty that they will be able to enforce any agreement reached.

ii. There is no express mention, in the Decree, of the enforceability of such agreements outside the Italian territory.

The only provision for expedited enforcement of international commercial settlement agreements is the one contained at the first paragraph of art. 12 of the Decree No. 28: "In the cross border disputes of art. 2 of EU Parliament and Council Directive 2008/52/CE dated 21 May 2008, the agreement is ratified ('omologato') by the President of the Tribunal where the Agreement has to be executed."

iii. There is no provision to the effect that an international commercial settlement agreement be treated as a final award rendered by an arbitral tribunal.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

Refusal of enforcement of a commercial settlement agreement may result from the failure to comply with formal requirements, imperative norms or public order.

Question 3: Validity of international commercial settlement agreements

Since mediation/conciliation agreements (clauses) are regarded as contracts in Italy, the question as to their validity is governed by the contract law applicable under the conflict of law provisions. Agreements to mediate/conciliate, as well as agreements resulting from mediation/conciliation, are regarded as contracts subject to the applicable contract law rules.